

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1952

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SUPREME COURT, U.S.

No. 70

THE UNITED STATES OF AMERICA, APPELLANT,

THE BEACON BRASS CO., INC., and MAURICE FEINBERG

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Filed March 12, 1953

Probable jurisdiction noted April 21, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 30

THE UNITED STATES OF AMERICA, APPELLANT,

VS.

THE BEACON BRASS CO., INC., and MAURICE FEINBERG

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

INDEX.

Record from U.S.D.C. for the District of Massachusetts	Original	Print
Docket entries	1	1
Indictment returned September 14, 1951	2	2
Transcript of hearing on arraignment, October 29, 1951	4	3
Motion to dismiss	5	3
Minute entry	6	4
Notice of appeal	9	4
Memorandum opinion, McCarthy, J., dismissing indictment	10	5
Designation of record	17	6
Indictment returned March 16, 1951	19	7
Transcript of hearing on arraignment, March 20, 1951 ..	22	8
Motion to dismiss	23	9
Minute entry	24	9
Order dismissing indictment	25	10
Memorandum opinion, Sweeney, J., dismissing indictment	26	10
Notice of appeal	28	11
Designation of record	29	11
Stipulation withdrawing appeal and discontinuing action and approval	30	12
Clerk's certificate (Omitted in printing)	31	12
Statement of points to be relied upon and designation of record	32	13
Designation of additional parts of the record	34	14
Order noting probable jurisdiction	36	14

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

Criminal No. 51-288

THE UNITED STATES

vs.

BEACON BRASS CO., INC. and MAURICE FEINBERG

Docket Entries

1951

- Sept. 14 Indictment returned.
Oct. 29 McCarthy, J. Defendant corporation, by Maurice Feinberg, arraigned and pleaded not guilty.
Oct. 29 McCarthy, J. Defendant Maurice Feinberg arraigned and pleaded not guilty. Ordered to recognize in sum of \$1000 (personal). Recog. on file.
Nov. 23 Motion to Dismiss filed by defendants.
Dec. 4 McCarthy, J. Hearing on Defendant's Motion to Dismiss; advisement.

1952

- Jan. 10 McCarthy, J. Memo received and filed allowing Defendant's Motion to Dismiss Indictment. Notice to counsel.
Jan. 10 McCarthy, J. Indictment dismissed.
Feb. 7 Notice of appeal filed by United States. (Copy to counsel)
Feb. 7 Statement as to jurisdiction filed.
Feb. 11 Designation of U.S.A. of Contents of Record on Appeal filed.
Feb. 20 Defendant's designation of contents of record on appeal, filed.

ATTORNEYS

For U. S.:

GEORGE F. GARRITY

United States Attorney

JOSEPH M. HARGEDON

Assistant United States Attorney

HAROLD G. JACKSON

Assistant United States Attorney

For Defendant:

RICHARD MAGUIRE

199 Washington St.

Boston 8, Mass.

Indictment

Filed September 14, 1951

At a District Court of the United States of America, for the District of Massachusetts, begun and holden at Boston, within and for said District, on the third Monday of March in the year of our Lord one thousand nine hundred and fifty-one.

The JURORS for the United States of America, within and for the District of Massachusetts, upon their oath, charge that on or about October 24, 1945, and thereafter, at Boston, in said District, BEACON BRASS CO., INC. a body corporate, with an usual place of business in Waltham, in said District, and MAURICE FEINBERG, of Brookline, in said District, president and treasurer of said corporation, hereinafter called the defendants, did wilfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by the said corporation to the United States of America for the fiscal period ending October 31, 1944, by making certain false and fraudulent statements and representations, at a hearing and conference before representatives and employees of the United States Treasury Department, on or about October 24, 1945, and on other occasions thereafter, concerning payments and disbursements made by the said Beacon Brass Co., Inc., for the purpose of concealing additional unreported net income received by the said Beacon Brass Co., Inc., in said period ending October 31, 1944, and on which said unreported income, as the defendants then and there well knew, there was due and owing to the United States of America a tax of approximately one hundred thirty-four thousand, nine hundred ten dollars and sixty-eight cents, (\$134,910.68); in violation of Section 145(b), Internal Revenue Code; 26 U. S. C., Section 145(b).

3 A True Bill.

/s/ W. RANDOLPH SIDES
Foreman of the Grand Jury.

/s/ JOSEPH M. HARGEDON
Asst. United States Attorney for the
District of Massachusetts.

DISTRICT OF MASSACHUSETTS,

September 14, 1951

Returned into the District Court by the Grand Jurors and filed

s/ JOHN F. DAVIS
Deputy Clerk.

(File Endorsement Omitted)

4

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Transcript of Hearing on Arraignment

Filed October 29, 1951

PRESENT:

Mr. Hargedon, for the Government.

R. Maguire, Esq., for the Defendants.

The CLERK. Beacon Brass Company, Inc. and Maurice Feinberg. Maurice Feinberg and Beacon Brass Company, this indictment charges each of you with violation of the income tax law. What say you, Maurice Feinberg? Guilty or Not Guilty?

The DEFENDANT. Not Guilty.

The CLERK. What say you for the Beacon Brass Company?

The DEFENDANT. Not Guilty.

Mr. HARGEDON. Well, may it please the Court, this is an indictment which was brought to supersede a previous indictment which was dismissed by Judge Sweeney, and I ask that bail be set in the sum of one thousand without surety for the individual defendant.

The COURT. That may be done.

Mr. MAGUIRE. May I ask ten days for special pleas?

Mr. HARGEDON. He may have fifteen if he wants to.

The COURT. I will give you 30. Do you want 30?

Mr. MAGUIRE. No, I will take 15.

(Defendant ordered to recognize in \$1000 without security.)

5

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Motion to Dismiss

Filed November 23, 1951

The defendants move that the indictment be dismissed on the following grounds:

(1) That the indictment was not found within six (6) years next after the alleged offense was committed.

(2) That the indictment is duplicitous in that it charges violation of Title 26, USC Section 145(b) and Title 18, USC Section 1001.

(3) That the indictment does not state an offense within the terms of Title 26, USC Section 145(b).

By their attorney,

/s/ RICHARD MAGUIRE

Affidavit of Service

(Omitted in printing)

6

IN UNITED STATES DISTRICT COURT

Minute Entry

On December 4, 1951, the matter came before the court (McCarthy, J.) on the defendant's Motion to Dismiss. After hearing, the matter was taken under advisement.

9

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Notice of Appeal

Filed February 7, 1952

The United States hereby appeals to the Supreme Court of the United States from the order of the United States District Court for the District of Massachusetts, entered January 10, 1952, dismissing the indictment against the defendants, which charge them with a violation of Section 145(b) of the Internal Revenue Code, which imposes criminal penalties against anyone who wilfully attempts to defeat and evade taxes imposed by Chapter 1 of the Internal Revenue Code relating to taxes on income of individuals and corporations.

FEBRUARY, 1952.

/s/ Philip B. Perlman
PHILIP B. PERLMAN,
Solicitor General.

/s/ George F. Garrity
GEORGE F. GARRITY
United States Attorney

/s/ Harold G. Jackson
HAROLD G. JACKSON
Assistant U. S. Attorney

(MEMORANDUM: Counsel were furnished with copies of Notice of Appeal
JOHN A. CANAVAN, Clerk)

IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

v.

BEACON BRASS CO., INC., and MAURICE FEINBERG

Criminal No. 51-288

Memorandum

January 10, 1952

McCarthy, D. J.:

The defendants have filed a motion to dismiss the indictment because it is duplicitous and because it does not state an offense within the terms of Title 26, U. S. C. A., § 145(b).

A similar indictment was dismissed on motion by this Court on April 27, 1951 (Criminal No. 51-55). I quote from the memorandum filed on that date: "The return of the Beacon Brass Company, Inc., for the fiscal year ending October 31, 1944, was filed with and received by the Collector of Internal Revenue in Boston, Massachusetts, on either January 5 or January 15, 1945. The stamp of the receiving office, which appears to be indistinct, reads 'January 5, 1945'. But since the check of the Beacon Brass Co., Inc., in payment of its reported tax was dated January 15, 1945, I would find as a fact if it were important (which it is not), that the return was filed on January 15, 1945. The six-year statute of limitations against the filing of a false return in violation of 26

U. S. C. A., § 145(b) commenced to run on that date. The indictment in this case was not returned by the Grand Jury until March 16, 1951, which is well over the six-year period The present indictment in one count . . . (charges) a violation of 26 U. S. C. A., § 145(b), plus the making of false statements at a hearing and conference before the representatives and employees of the United States Treasury Department on October 24, 1945. This is bad pleading. If the United States wanted to allege a violation of 18 U. S. C. A., (1940 ed.) § 80, (18 U. S. C. A., § 1001, 1948 ed.), for the making of false statements, it should have set it forth succinctly in the language of the statute (Emphasis supplied.)

The indictment with which we are here concerned was returned on September 14, 1951, charging the defendants with violation of 26 U. S. C. A. § 145(b) in that the individual defendant made fraudulent statements on October 24, 1945 to Treasury Agents concerning payments and disbursements by the corporate defendant for the purpose of concealing additional unreported income. The only difference, therefore, between this indictment and the

indictment in Criminal No. 51-55 in this Court is that no mention is made here by the Government of the fact that the corporation filed its tax return in January of 1945.

This indictment does not charge that the defendants violated 18 U. S. C. A., § 1001. A prosecution in 1951 under this statute for a false statement in 1945 would be barred by the three-year statute of limitations. The Government contends, however, that the act of making fraudulent representations to a Treasury Agent to
12 "support and bolster a fraudulent return" is in and of itself a violation of 26 U. S. C. A., § 145(b) which forbids evasion of income tax "in any manner", and to which the six-year statute of limitations is applicable.

Section 145(b) of Title 26, U. S. C. A., contemplates that many methods can be used to accomplish the crime of tax evasion. On the other hand, Section 1001 of Title 18 deals specifically with a situation such as is presented here. In passing the latter statute Congress must be presumed to have intended that making false statements should be punished thereunder. There is a different penalty provided than under 26 U. S. C. A. § 145(b), and Congress thereby emphasized the distinctness of the two offenses. *Greel v. United States*, 8 Cir., 21 F.2d 690, 691.

The Court concludes that the act alleged in this indictment is not such an act as was contemplated by the provisions of 26 U. S. C. A. § 145(b), and that the indictment, therefore, must be and it is hereby dismissed.

17

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Designation of the United States of America of Contents of Record on Appeal

Filed February 11, 1952

The United States of America hereby designates the following portions of the record, proceedings and evidence to be contained in the record on appeal to the Supreme Court of the United States in the above case:

1. Indictment
2. Plea
3. Motion to Dismiss
4. Memorandum of District Judge William T. McCarthy dated January 10, 1952, dismissing the indictment.
5. Order of Judge William T. McCarthy dismissing the indictment against the defendants

6. Docket entries
7. Notice of Appeal
8. Statement as to Jurisdiction
9. Notification to appellees of appeal
10. Designation of record on appeal

GEORGE F. GARRITY
United States Attorney

By: /s/ Harold G. Jackson
HAROLD G. JACKSON
Assistant U. S. Attorney

Certificate of Service

(Omitted in printing)

- 18 (MEMORANDUM: The following record in Criminal No. 51-55, The United States of America v. Beacon Brass Co., Inc. and Maurice Feinberg, was designated by the defendant to be included as additional portions of the record on appeal.

JOHN A. CANAVAN, Clerk)

19

IN UNITED STATES DISTRICT COURT

Indictment

Filed March 16, 1951

At a District Court of the United States of America, for the District of Massachusetts, begun and holden at Boston, within and for said District, on the third Monday of September in the year of our Lord one thousand nine hundred and fifty.

THE JURORS for the United States of America, within and for the District of Massachusetts, upon their oath, charge that on or about October 24, 1945, and thereafter, at Boston, in the District of Massachusetts, and within the jurisdiction of this Court, BEACON BRASS CO., INC., a body corporate, with an usual place of business in Waltham, in said District, and MAURICE FEINBERG, of Brookline, in said District, president and treasurer of said corporation, hereinafter called the defendants, did wilfully and knowingly attempt to defeat and evade a large part of the taxes due and owing by the said Corporation to the United States of America for the fiscal period ending October 31, 1944, by making certain false and fraudulent statements and representations, at a hearing and conference before representatives and employees of the United States Treasury Department, on October 24, 1945, and on other occasions thereafter, concerning payments and disbursements made

by the said Beacon Brass Co., Inc., for the purpose of supporting, ratifying, confirming and concealing the fraudulent and incorrect statements and representations made in the corporate tax return of said Beacon Brass Co., Inc., for the fiscal period ending October 31, 1944, filed on or about January 5, 1945, wherein the defendants alleged that the net income of the corporate defendant for the said fiscal period was the sum of Four Thousand Three Hundred Sixty-Two Dollars and Twenty-Nine Cents, (\$4,362.29), and that the total amount of tax due thereon was the sum of One Thousand Ninety Dollars and Fifty-Seven Cents, (\$1,090.57); whereas, as said defendants then and there well knew, the net income of

20 said corporation was the sum of One Hundred Sixty-Five Thousand Seven Hundred Sixty-Eight Dollars and Seventy Cents, (\$165,768.70); upon which net income the corporation owed to the United States of America, a total tax of One Hundred Thirty-Six Thousand One Dollars and Twenty-Five Cents, (\$136,001.25); in violation of Title 26, Section 145(b), United States Code.

21 A True Bill.

/s/ J. ERNEST GWILLIAM
Foreman of the Grand Jury

/s/ JOSEPH M. HARGEDON

Asst. United States Attorney for the
District of Massachusetts.

DISTRICT OF MASSACHUSETTS,

March 16, 1951

Returned into the District Court by the Grand Jurors and filed

s/ JOHN F. DAVIS
Deputy Clerk.

(File Endersement Omitted)

22

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Transcript of Hearing on Arraignment

March 20, 1951

APPEARANCES: Joseph M. Hargedon, Esq., for the Government.
Richard Maguire, Esq., for the Defendant.

The CLERK. 51-54 and 51-55, United States v. Maurice Feinberg and Beacon Brass Company, Inc.

Mr. MAGUIRE. I have a power of attorney I would like to file.

Mr. HARGEDON. I rather doubt that a power of attorney is necessary here. This man owns all the stock of the corporation and I don't believe it is necessary to file a power of attorney.

The CLERK. Maurice Feinberg, these indictments charge you with violation of the income tax law. What say you to 51-54, guilty or not guilty?

Defendant FEINBERG. Not guilty.

The CLERK. And to 51-55?

Defendant FEINBERG. Not guilty.

The COURT. Is a plea of not guilty to be entered for the corporation?

Mr. MAGUIRE. Yes. If your Honor please, there is a previous indictment on which I think your Honor allowed 21 days for special pleas and I wondered if on these indictments I might have 20 days. There are some unusual features.

The COURT. That is all right.

The CLERK. Maurice Feinberg, the Court orders that you recognize on indictment 51-54 in the sum of \$1,000 without security for your appearance here in obedience to all orders and directions of the Court until this indictment against you is disposed of. In default thereof you stand committed.

23

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Motion to Dismiss

Filed April 6, 1951

The defendants move that the indictment be dismissed on the following grounds:

(1) That the indictment was not found within six (6) years next after the alleged offense was committed.

(2) That the indictment is duplicitous in that it charges violation of 26 USC Section 145 (b) and Title 18 USC Section 80.

By their attorney,

/s/ RICHARD MAGUIRE

Affidavit of Service

(Omitted in printing.)

24

IN UNITED STATES DISTRICT COURT

Minute Entry

On April 23, 1951, the Motion to Dismiss came before the court (Sweeney, J.) and after hearing, was taken under advisement.

10

U. S. V. BEACON BRASS CO., INC., AND MAURICE FEINBERG

25

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Order

April 27, 1951

SWEENEY, Ch. J. After hearing on the Motion to Dismiss filed by the defendants, and in accordance with the Memorandum handed down this day, it is

ORDERED that the Indictment be, and it hereby is, dismissed.

By the Court,

Deputy Clerk

/s/ G C SWEENEY
4-27-51

26

IN UNITED STATES DISTRICT COURT

UNITED STATES OF AMERICA

v.

BEACON BRASS CO., INC.

and

MAURICE FEINBERG

Criminal No. 51-55

Memorandum

April 27, 1951

SWEENEY, Ch. J. The defendant has filed a motion to dismiss because the indictment is duplicitous. The facts are as follows:

The return of the Beacon Brass Company, Inc., for the fiscal year ending October 31, 1944, was filed with and received by the Collector of Internal Revenue in Boston, Massachusetts, on either January 5 or January 15, 1945. The stamp of the receiving office, which appears to be indistinct, reads "January 5, 1945". But since the check of the Beacon Brass Co., Inc., in payment of its reported tax was dated January 15, 1945, I would find as a fact if it were important (which it is not), that the return was filed on January 15, 1945. The six-year statute of limitations against the filing of a false return in violation of 26 U.S.C.A., § 145 (b) commenced to run on that date. The indictment in this case was not returned by the Grand Jury until March 16, 1951, which is well over the six-year period. Another indictment, No. 51-54, for the evasion of the above statute has been dismissed by the Court when the United States was put to its election.

The present indictment in one count seeks to revive the action by charging a violation of 26 U.S.C.A., § 145 (b), plus the making of false statements at a hearing and conference before the representatives and employees of the United States Treasury Department on October 24, 1945. This is bad pleading. If the United States wanted to allege a violation of 18 U.S.C.A., (1940 ed.) § 80, (18 U.S.C.A., § 1001, 1948 ed.), for the making of false statements, it should have set it forth succinctly in the language of the statute. The statute of limitations having run, the action could not be revived by the mere charge of subsequent false statements.

This indictment is dismissed.

28

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Notice of Appeal

Filed May 28, 1951

Now comes the plaintiff, the United States of America, by George F. Garrity, United States Attorney for the District of Massachusetts, by Thomas P. O'Connor, Assistant United States Attorney, in the above-entitled matter and appeals to the Court of Appeals for the First Circuit from the decision and Order of the District Court heretofore entered in the above matter on April 27, 1951 dismissing the indictment, which indictment charges the defendants with violation of Title 26, United States Code, Section 145(b).

GEORGE F. GARRITY
United States Attorney

By: /s/ THOMAS P. O'CONNOR
Assistant U.S. Attorney

29

IN UNITED STATES DISTRICT COURT

(Title Omitted)

**Designation of the United States Government of Contents of
of Record on Appeal**

Filed June 11, 1951

The United States of America designates the following portions of the record and proceedings to be quoted in the record on appeal:

1. Indictment
2. Plea
3. Motion to Dismiss

4. Memorandum of decision by Judge George C. Sweeney
5. Order of Judge Sweeney dismissing indictment against the defendants
6. Statement of Points
7. Designation

GEORGE F. GARRITY
 United States Attorney
 By: /s/ Joseph M. Hargedon
 JOSEPH M. HARGEDON
 Assistant U.S. Attorney

Certificate of Service

(Omitted in printing)

30

IN UNITED STATES DISTRICT COURT

(Title Omitted)

Stipulation

Filed June 29, 1951

In the above-entitled case, it is stipulated between the parties that the appeal heretofore entered in said case is waived and withdrawn and the action discontinued.

UNITED STATES OF AMERICA

By:

GEORGE F. GARRITY
 United States Attorney

By: /s/ Joseph M. Hargedon

JOSEPH M. HARGEDON
 Assistant U.S. Attorney

BEACON BRASS Co., Inc.,

and

MAURICE FEINBERG

By their attorney

/s/ Richard Maguire

July 2-51

APPROVED:

/s/ FJWF

U.S. District Judge

(MEMORANDUM: The foregoing Stipulation dismissing the appeal was approved by Judge Ford on July 2, 1951)

JOHN A. CANAVAN, Clerk.

(CLERK'S CERTIFICATE to foregoing transcript omitted in printing)

32

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

(Title Omitted)

Statement of Points to Be Relied Upon and Designation of Record

Filed March 27, 1952

Pursuant to Rule 13, Paragraph 9, of this Court, appellant states that it intends to rely upon the following points:

1. The District Court erred in holding that the indictment charging that the defendants made fraudulent statements on October 24, 1945, to Treasury Agents, concerning payments and disbursements by the corporate defendant, for the purpose of concealing additional unreported income, in violation of Section 145(b), Internal Revenue Code, did not allege an act contemplated by that statute as a manner of attempted tax evasion.

2. The District Court erred in holding that Congress must be presumed to have intended that the making of false statements such as that alleged in the indictment in this case should be punished under Section 35 of the Criminal Code, 18 U. S. C. (1946 ed.) 80; now 18 U. S. C. (Supp. IV) 1001.

3. The District Court erred in granting the motion to dismiss the indictment.

Appellant deems the entire record as filed in the above-entitled case, with the exception of that portion which relates to a prior indictment of appellees (Criminal No. 51-55 in the court below), to be necessary for consideration of the points relied upon.

PHILIP B. PERLMAN,
Solicitor General.

MARCH 27, 1952.

(FILE ENDORSEMENT OMITTED)

14 U. S. v. BEACON BRASS CO., INC., AND MAURICE FEINBERG

34 IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1951

(Title Omitted)

Designation of Additional Parts of the Record

Filed April 10, 1952

Appellee deems the entire record relating to a prior indictment, Criminal No. 51-55 in the court below, necessary for consideration of the points relied upon.

RICHARD MAGUIRE

Attorney for Appellée

(FILE ENDORSEMENT OMITTED)

36 SUPREME COURT OF THE UNITED STATES

NO. 562, OCTOBER TERM, 1951

(Title Omitted)

Order Noting Probable Jurisdiction

Filed April 21, 1952.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary docket.

